

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGES' RULING
ON REMAINING DISCOVERY DISPUTES**

The May 9, 2005 Administrative Law Judges' Ruling on Protective Order and Remaining Discovery Disputes in the above proceedings (May 9 Ruling) resolved various discovery disputes and directed Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Edison Company (SCE) to make available certain utility data in one of two categories: (1) information that was to be made public and distributed to the requesting parties, and (2) information to be made accessible only to those willing to sign a non-disclosure agreement as part of a protective order. In response to concerns from Qualifying Facility (QF) parties regarding continuing disputes over compliance with the May 9 Ruling, an Administrative Law Judge (ALJ) Ruling dated June 14, 2005 compelled compliance with the initial ruling and directed the utilities to distribute the remaining non-protected data by

June 17, 2005. A further ALJ ruling on July 29, 2005 directed parties to provide status reports on the remaining discovery issues by August 4, 2005.

Status reports were submitted by the Cogeneration Association of California and Energy Producers and Users Coalition jointly (CAC/EPUC), the California Cogeneration Council (CCC), and the Independent Energy Producers Association (IEP). PG&E, SDG&E and SCE filed responses to the status reports on August 8, 2005. The status reports were discussed at a Prehearing Conference (PHC) before ALJs Julie Halligan and Carol Brown on August 9, 2005. In some cases, the discussion at the PHC resulted in sufficient narrowing of the issues or clarification of the requests such that certain disputes were resolved. In other cases, the discussion at the PHC revealed that ALJ resolution was required; those disputes were taken under submission for resolution in this ruling.

In two instances, the ALJs permitted the parties to file supplemental comments regarding pending data requests. First, the ALJs permitted the California Department of Water Resources (DWR) to submit further comments concerning the potential release of the utilities' DWR Gas Supply Plans. On August 12, 2005, DWR submitted a memorandum in opposition to the release of the Gas Supply Plans. Also on August 12, 2005, PG&E, SDG&E, and SCE filed comments supporting DWR's opposition. The utilities request reconsideration of the May 9 Ruling regarding the disclosure of the DWR Gas Supply Plans. CAC/EPUC and CCC filed responses to the supplemental comments on the release of the DWR Gas Supply Plans on August 17, 2005. With the permission of the ALJ, IEP filed a response to the Supplemental Comments on August 18, 2005, one day out of time.

The ALJs also permitted SCE to file supplemental comments regarding Advice Letter 1832-E. SCE filed the Supplemental Comments regarding Advice Letter 1832-E along with a Motion for Confidential Treatment of Portions of

Appendix B to Advice Letter 1832-E on August 11, 2005. CAC/EPUC filed a response to SCE's Supplemental Comments on August 15, 2005.

Any data requests not specifically discussed in this ruling are assumed to have been resolved between the parties. On August 18, 2005, SCE transmitted a letter the service lists in these proceedings indicating that SCE and the CCC had resolved certain of the discovery requests listed as pending in CCC's August 4, 2005 status report. In general, this ruling does not address data requests that were propounded after the May 9 Ruling with the exception of requests that simply constituted resubmissions of earlier requests. Parties should look to today's ruling, as well as the May 9 Ruling, for guidance in their discussions regarding discovery matters.

Adopted Standard for Review of Discovery Requests

As noted in the May 9 Ruling, the Commission often faces tension between the desire for transparency of information in Commission proceedings and the potential adverse impacts the release of some information may have on markets and ultimately ratepayers. Recognizing that the Commission has broad discretion on disclosure issues pursuant to Public Utilities Code Section 583, the May 9 Ruling attempted to resolve the discovery disputes using two primary principles. First, the May 9 Ruling used as guidance, the criteria of Code of Civil Procedure section 2017(a) (discovery of "any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . , if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence").

Next, assuming that the data requested was not privileged, the May 9 Ruling turned to whether the information should be disclosed and conducted a public interest balancing test. Noting that many of the discovery requests at issue concerned data related to the utilities' procurement of energy, the May 9

Ruling considered the requirements of Public Utilities Code Section 454.5(g) in determining how to resolve the discovery issues. This code section provides that the Commission “shall ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are non-market participants shall be provided access to this information under confidentiality procedures authorized by the commission.”

The May 9 Ruling adopted a protective order that balances the QF parties’ need for certain information to participate meaningfully in this proceeding with the utilities need (and, implicitly, the ratepayers’ need) to prevent certain sensitive market information from being released publicly.

Ultimately, with respect to requests regarding data determined to be highly market sensitive or trade secret, the May 9 Ruling held that certain data should not be released at all, regardless of the availability of a protective order. For other requests, the May 9 Ruling found that data could be released, subject to a protective order which required a Market Participating Party Reviewing Representative to agree to a two-year prohibition from participation in activities that would have more than a de minimus impact on California markets.

In general, the May 9 Ruling required that the utilities publicly release quarterly and annual summaries of utility data, whereas daily and hourly versions of the data would be protected due to the concern that the public availability of hourly or daily data would allow market participants to more accurately determine when each utility may need power or possess excess energy, often referred to as a utility’s residual net short or residual net-long

position. The Commission has previously described a utility's residual net short position as "the difference between customer loads and the power already under contract to the utilities or generated from a utility-owned asset."¹

In their responses to the status reports, the utilities repeated their initial arguments that certain material must remain confidential because the detailed information provided could affect the price of power paid by utility customers. They argued that the information should be considered "market sensitive" under Pub. Util. Code § 454.5(g),² as trade secrets pursuant to Civ. Code § 3626.1(d), and as potentially placing the utilities at an "unfair business disadvantage" for purposes of General Order 66-C. As with the prior motions and responses, these arguments are not, as a rule, made with particularity as to each element of the information the utilities deem confidential. The QF parties responded generally by stating that the utilities' repetitive claims of confidentiality or trade secrets should not insulate them from producing relevant information previously ordered to be disclosed by the May 9 Ruling.

Discovery Requests

The following section sets forth our rulings on the remaining discovery disputes identified at the PHC and in the Supplemental Comments:

CCC Data Requests SCE 01-02/03-11:

In Data Request 01-02, the CCC requests that the utilities provide their current forecast of hourly system demand for the period 2006 to 2010, including: (1) the most recent 8760 hour retail demand forecasts for each year in the period from 2006 through 2010 (in MWh, by hour), (2) the assumed levels of energy

¹ D.02-09-053, p.1.

² All references to sections are to the Public Utilities Code unless otherwise specified.

efficiency programs, direct access loads, customer migration to community choice aggregation programs, and load loss to distributed generation or municipalization. CCC later stated that it was willing to accept historical hourly load data for the past two years, and monthly forecasts for the years 2006-2010. CCC also requested that the utilities indicate whether the forecast provided is from the R.04-04-003 procurement plan filing.

Noting that the information requested is highly market sensitive, in that, if combined with sufficient load information, it would enable recipients to determine the utilities' net short and net long positions, the May 9 Ruling stated that any hourly or monthly information should be deemed confidential, and released only under the approved protective order, unless the information has been released publicly in another forum, such as at the CEC. The May 9 Ruling required the utilities to provide quarterly demand forecasts without a protective order. Consistent with CCC's request and the ensuing discussion, the quarterly demand forecasts should include system demand as well as bundled customer demand (defined as system demand less the assumed levels of energy efficiency programs, direct access loads, customer migration to community choice aggregation programs, and load loss to distributed generation or municipalization).

SCE states that it served CCC, IEP and CAC/EPUC with its updated response, which contained SCE's quarterly demand forecast and assumed levels of direct access, departing load and energy efficiency. SCE states that it also served its monthly system demand forecast data for 2006-2010 on the QF parties Reviewing Representatives subject to the protective order. At the PHC, the parties were directed to communicate further to determine if any portion of these data requests remained outstanding. SCE's August 18, 1005 letter indicates that

SCE and CCC have agreed that the data request responses provided by SCE fully resolve CCC's issues concerning SCE's responses to these data requests.

CCC Data Requests SCE 01-04/02-02/03-01:

In their August 4, 2005 discovery status report, the CCC reported that SCE has not provided quarterly purchased power data for the first quarter of 2005 pursuant to CCC Data Requests 01-04/02-02/03-01 (Regarding Historical Procurement Costs). SCE states that it provided 2003 and 2004 and first quarter 2005 historical procurement cost data aggregated on a quarterly basis.³ The August 18, 2005 letter from SCE to CCC indicates that this request has been resolved between the parties.

CCC Data Requests 01-05/01-10/02-03/03-10:

CCC Data Request 01-05 sought the utilities' forecasts for 2005 and 2006 of monthly Utility Retained Generation (URG) costs and energy (MWh) produced, broken down by resource type (hydro, coal, nuclear, QF gas, QF renewable, IOU gas-fired and other). CCC further requested that the purchased power category be disaggregated into DWR contracts, long-term, and short-term purchases. In Data Request 02-03, CCC stated that it would accept data for 2005 only, so long as it was provided in monthly on-and off-peak units disaggregated into DWR contracts, QF gas, QF renewable, RPS renewable, long-term bilateral contracts, and other wholesale market purchases. In their August 4, 2005 status report, the CCC states that SCE has provided data for 2005 but not for 2006; and that the data provided does not include QF, DWR or other purchased power. SCE reports that in response to 02-03 and 03-10, it provided its 2005 and 2006 forecasts of URG costs and MWh aggregated on a quarterly basis. SCE takes the position

³ SCE Discovery Status Report, dated August 8, 2005, p. 9.

that the May 9 Ruling does not require disclosure of forecast data for DWR or purchased power or disaggregation of URG by resource type. SCE states that pursuant to the Ruling, SCE provided its 2005 forecast of URG costs and MWh aggregated on a quarterly basis. PG&E notes that its definition of URG includes only PG&E-owned fossil, hydro, and nuclear generation.

The May 9 Ruling required the utilities to produce quarterly forecasts of URG costs and energy (MWhs produced). Consistent with the discussion in the ruling, the URG category should include hydro, coal, nuclear, QF gas, QF renewable, IOU gas-fired and other IOU renewable generation. The URG category should not include DWR resources. The May 9 Ruling did not require the data to be disaggregated by resource type. This data was to be released publicly (i.e., not subject to the protective order).

CCC Data Requests 01-10/03-03:

In response to CCC Data Request 01-10, the May 9 Ruling required the utilities to make available quarterly aggregated forecast data on QF generation for the years 2006-2010, disaggregated by gas-fired and renewable QFs. This data was to be provided subject to the protective order. SCE states that it provided quarterly aggregated forecast data on QF generation for the years 2006-2010 subject to the protective order. Assuming that SCE has also broken down the data into gas-fired and renewable categories, SCE has appropriately complied with the request.

CCC Data Requests 01-07/01-08 and 03-08:

In response to CCC Data Request 01-07 and 01-08 the May 9 Ruling stated that the utilities shall provide annual forecasts of natural gas and electric market

prices for the years 2006-2010.”⁴ CCC reports that SCE has provided forecasts for the years 2008-2010, but has not provided forecasts for 2006 and 2007. SCE states that it has provided annual natural gas price forecasts for 2006 and 2007 subject to the protective order. SCE points out that with respect to similar price forecast requests by IEP in Data Requests SCE 02-10 and SCE-02-11, in which IEP requested unredacted copies of all the forecasts of future wholesale electric and gas prices prepared or used by PG&E and SCE since January 1, 200, the May 9 Ruling found that the forecast prices “may be market sensitive as they are a factor in determining the expected commitment and dispatch of a utility’s resources.” For this reason, the May 9 Ruling declined to order public disclosure of the utilities’ electric and gas forecast prices. SCE suggests that the May 9 Ruling is internally inconsistent with respect to the level of disclosure required for current electricity and natural gas forecasts. SCE also argues that question of whether the natural gas forecasts for 2006 to 2010 were to be released publicly was not specifically addressed. SCE also notes that on April 28, 2005 the CEC issued a decision in its IEPR proceeding in which it determined that SCE’s current annual natural gas and electricity price forecasts for 2006 and 2007 are confidential trade secrets which are prohibited from public disclosure.

Although the May 9 Ruling regarding CCC Data Requests 01-07 and 01-08⁵ states that the utilities shall provide annual forecasts of electric natural gas price forecasts for the years 2006-2007 without a requirement that the data be provided subject to the protective order, it is clear from the ruling’s earlier findings

⁴ Administrative Law Judges’ Ruling on Protective Order and Remaining Discovery Disputes in R.04-04-003/R.04-04-025, dated May 9, 2005, p. 30.

⁵ CCC Data Request 03-08 was not addressed in the May 9 Ruling.

regarding IEP Data Requests SCE 02-10 and 02-11 that the ALJs intended to limit disclosure of current electric and natural gas price forecasts. SCE's response demonstrates a reasonable compromise in our view, in that SCE has provided its current electricity and natural gas price forecasts for the years 2006 and 2007 subject to the protective order. In keeping with the May 9 Ruling's conclusion that electric and gas forecast prices "may be market sensitive as they are a factor in determining the expected commitment and dispatch of a utility's resources," we decline to order the utilities to release the requested forecasts without the adopted protective order. The utilities may continue to require a signed protective order prior to release of the requested data.

CAC/EPUC Data Requests PG&E 01-03/SCE 01-04:

These data requests seek PG&E's and SCE's Short-Term Procurement Plan Compliance Reports. CAC/EPUC complains that the compliance reports were provided with substantial information improperly redacted. PG&E responds that the May 9 Ruling did not require PG&E to produce the reports themselves, but rather referred to the data be released under the approved protective order. SCE argues that it appropriately redacted (1) data that would reveal, or enable the recipient to determine, SCE's net short or net long position on less than a quarterly aggregated basis, and (2) trade secret, market sensitive, and confidential proprietary business information that is outside the scope of this proceeding, including the rationale for SCE's bidding strategy in the ISO's Firm Transmission Rights auctions, the auction results and the results of SCE's requests for offers for power. SCE argues that the redacted versions provided appropriately complied with the May 9 Ruling by redacting information leading to the release of the utilities' residual net short and net long positions as well as proprietary data that was not specifically requested by the QF parties.

Upon finding or realizing that release of the Advice Letters would release residual net short or net long data that had otherwise been ruled confidential; the utilities should have requested clarification or reconsideration in a timely manner. Similarly, the QF parties had sufficient time between the May 9 Ruling and the August 9, 2005 PHC to bring the dispute to the attention of the ALJs. The QF parties are correct, in that with respect to CAC/EPUC Data Requests SCE 01-04 and PG&E 01-03, although the May 9 Ruling recognized that the data was market-sensitive, in that access would provide market participants with certain tools to predict the utilities' residual net short and net long positions in the near future, the ruling determined that the data should be released under the approved protective order. The May 9 Ruling did so after specifically acknowledging that the filings contained detailed quarterly purchase and sale information.

The utilities now seek reconsideration of the May 9 Ruling with respect to these requests, arguing that information that would reveal the utilities residual net short and net long positions should not be released, even under the protective order. The utilities, in particular SCE, further claim that the May 9 Ruling did not contemplate the release of trade secret, market sensitive, and confidential proprietary business information contained in the Short-Term Procurement Plan Compliance Reports, including the rationale for SCE's bidding strategy in the ISO's Firm Transmission Rights auctions. At the PHC, SCE provided a copy of a redacted version Advice Letter 1753-E for in camera review by the presiding ALJs. The redacted data includes SCE's actual residual net short and residual net long positions for certain time periods, as opposed to information with which the parties could attempt to predict the residual net short and residual net long positions. We find that this discovery dispute should be resolved consistent with the principle adopted in the May 9 Ruling regarding

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the need to protect the utilities' residual net short and residual net long positions.
SCE's request for reconsideration of the May 9 Ruling should be granted.

CAC/EPUC Data Requests PG&E 01-04/-2-04 and SCE 01-05:

These data requests seek copies of Gas Supply Plans for DWR tolling agreements.⁶ The utilities note that on June 16, 2005, DWR submitted a memorandum to the ALJs expressing concern about disclosure of the utilities' gas supply plans and recommending that the Commission consider establishing a further briefing cycle. DWR authorized PG&E to provide annual gas volume purchased and purchase price, by delivery point for 2003 and 2004. SCE has provided annual volumes and average prices for SCE's physical gas purchases for DWR, broken down by delivery inside California and delivery outside California.

In its August 12, 2005 memorandum regarding disclosure of the Investor-Owned Utility Gas Supply Plans, DWR objects to the disclosure of the Gas Supply Plans and states that they should not be disclosed without a finding that: (1) the plans are relevant to this proceeding; (2) they provide information which is not available through other sources; and (3) that QF parties would suffer substantial harm without the information.

⁶ Under the Operating Agreements approved by Commission Decisions (D.) 02-12-060 and 03-04-029, as modified by D.04-10-020, the utilities serve as CERS' limited agents for purposes of administering CERS long-term contracts allocated by D. 02-09-053. The Commission has described the IOU's gas supply plans as follows:

"The utilities are responsible for preparing "Gas Supply Plans" detailing their strategies for procuring gas and proposed use of risk management instruments. These plans will set parameters under which the utilities will perform the various gas-related activities pursuant to the gas tolling provisions. The utilities shall file these plans for Commission approval through Advice Letter filings on a semi-annual basis. The Commission will review and approve these plans on an expedited basis. Following approval of the Gas Supply Plans, the utilities will negotiate with suppliers for gas supplies, transportation, and storage. Negotiated agreements will then be submitted to DWR for execution." Resolution E-3833 at p. 5, citing Decision 02-12-069 at 27.

DWR also suggests a compromise position in which actual cost information would be made available to the Qualifying Facilities under the approved protective order, but that other information contained in the plans and used to assess gas contracts, the use of gas storage, risk management, remain confidential.

PG&E notes that in the Confidentiality Rulemaking (R.05-06-040), the Commission Staff has recommended confidential treatment for “the quantity of the natural gas used to generate power” and “for monthly DWR gas position updates, including information about hedging activities,” and that discovery rulings in this proceeding should not predetermine the conclusions the Commission will ultimately reach in R.05-06-040.

PG&E also states that it has provided the Reviewing Representatives with confidential data concerning the annual gas volumes purchased and the purchase price, by delivery point for 2003 and 2004. PG&E also notes that the May 9 Ruling recognizes that QF parties should not have access to “utilities daily energy plans and the final version of the utilities daily energy plans for the most recent 12-month period” even pursuant to the protective order, concluding that “this information should not be subject to disclosure because the risk to ratepayers of releasing data delineating the utility’s positions outweighs the public interest in making this data available to market participants for purposes of the avoided cost rulemaking.”⁷ PG&E notes that the information redacted from the Gas Supply Plans consists of: (1) projections of prices based on forward curves PG&E developed using proprietary broker quotes; (2) projections of gas volumes it will need to supply its DWR contracts (representing PG&E’s net open

⁷ May 9, 2005 Ruling at p. 14.

position with respect to its DWR-contract-related gas needs); (3) the gas needs are developed with PG&E's adaptation of Gen Trader, a commercial product, whose confidentiality PG&E has consistently maintained; (4) PG&E's gas procurement strategy; (5) PG&E's gas price risk management strategies, which include sufficient detail such that an analyst could determine PG&E's net open gas positions, as well as its net open electric position; and (6) bid information related to Request for Offers (RFOs) PG&E has issued, as well as its bid evaluation methodology, RFO results, and PG&E's recommendations. PG&E argues that none of this information is relevant to PG&E's avoided costs, but all of the information represents trade secret and market sensitive information.

SDG&E agrees, and also argues that the strategic assessments and information contained in the Gas Supply Plans constitutes intellectual property, whose value does not expire with time and instead continue to be viable for years into the future. Therefore, SDG&E argues, the protective orders's two – year moratorium on the reviewing party's ability to engage in competitive business affecting the California markets would expire before the value of the intellectual property reflected in the Gas Supply Plans. SDG&E further notes that, in other proceedings, the Commission has adopted the procedure of permitting utilities to file redacted and non-redacted versions of the Gas Supply Plans, with the non-redacted versions being available for review by a Procurement Review Group. SDG&E suggests that the same approach could be adopted here where the utilities could be permitted to redact the non-price, volume and location information from the Gas Supply Plans prior to producing them under the protective order.

SCE also states that contained in the plans and attached to the plans are energy and gas forward curves that were developed using forecasts of hourly energy prices and daily gas prices. The plans also reflect SCE's derivation of a

gas price distribution that is based on a proprietary model SCE created. SCE notes that the May 9 Ruling recognized that forecasts of wholesale electric prices and wholesale natural gas prices are market sensitive. SCE also argues that disclosure of its purchasing strategy would impair SCE's ability to obtain the supplies it requires at the lowest possible price. SCE also argues that the CAC/EPUC has not satisfied their burden of whether the data is relevant and necessary in this proceeding.

In their August 17, 2005 comments, CAC/EPUC and CCC argues that the Commission has already addressed the confidentiality concerns regarding the Gas Supply Plans and comments that the utilities should not be granted a "second bite at the apple." They repeat their assertion that natural gas costs are the most critical parameter the Short-Run Avoided Cost pricing formula, but do not address DWR's suggestion that data concerning gas prices, deliveries, and locations presented in the Gas Supply Plans should be released. Essentially they argue that the protective order should eliminate the concerns of DWR and the utilities regarding trade secret and market sensitive data, therefore the entire plans should be released. CAC/EPUC further argues that it is highly unlikely that the QF parties could have even a de minimus impact on the gas market due to its size, liquidity and because California's share of the market is 30%.

The CCC does not explain further why the information the utilities object to is relevant or likely to lead to relevant evidence in this proceeding, instead the CCC simply argues that release of procurement strategies is not harmful, because "any market participant has to assume that any market strategy must be revised over the next two years." As the utilities explain, certain information should be redacted to ensure that the residual net short is maintained as confidential. That is indeed consistent with the May 9 Ruling and we will grant the utilities' request for reconsideration of the May 9 Ruling in this regard. Although the protective

order is in place to protect relevant, but market sensitive information, the May 9 Ruling explicitly rejects requests for release of data revealing the utilities' residual net short or trade secret information, even if relevant. The utilities are permitted to redact the non-price, volume and location information from the Gas Supply Plans prior to producing them under the protective order.

CAC/EPUC Data Request SCE 01-06 and IEP Data Request 01-05:

CAC/EPUC and IEP request a copy of the local reliability procurement proposal filed by SCE in Advice Letter 1832. This advice filing contains the parameters under which SCE will solicit up to 600 MW of capacity to ensure local reliability in its service territory in addition to seeking approval of a new contract form. The May 9 Ruling found that SCE's general statement regarding the appendix methodology was insufficient to support its request for confidentiality. The ruling allowed SCE to submit additional comments explaining why each component of the local reliability procurement proposal filed in Advice Letter 1832 should remain confidential. SCE was directed to attach copies of the documents sought, along with a motion for confidential treatment, for in camera review. SCE did not file the motion until August 11, 2005, following the August 9, 2005 PHC.⁸

In its Supplemental Comments, SCE requests that Section IV, Section VI, and the related diagram summarizing Section IV of Appendix B to Advice Letter 1832-E, dated October 22, 2004 should remain confidential. SCE states that these

⁸ Attached to SCE's August 11, 2005 motion is a paper describing research commissioned by SCE on the effects of asymmetrical information disclosure in certain bilateral negotiations constructed by the researchers. SCE previously attached the paper to a motion for confidentiality of certain data filed in R.04-04-026. Since this paper has neither been published in a peer-reviewed journal nor been subject to cross-examination in this proceeding, it will not be considered in this ruling.

sections disclose precisely how SCE evaluates and ranks bids for the supply of energy and capacity pursuant to proposed contracts that provide local area reliability. SCE is concerned that market participants or their representatives who have knowledge of this methodology would have a financial incentive to take advantage of this knowledge to maximize their profit at the expense of SCE and its ratepayers.

SCE notes that in submitting Advice Letter 1832-E to the Commission, it initially designated all of Appendix B as confidential, but, upon closer analysis, has limited its claim to specified portions of the Appendix. The confidential portions of Appendix B describe in detail the procedure SCE proposed to use to evaluate, rank order, and select offers submitted in response to its fall 2004 RFO to meet the identified local area reliability requirements. The confidential portions of Appendix B also establish a threshold or premium amount SCE would pay for local area reliability benefits without obtaining prior Commission approval. SCE notes that the market for local area generation is limited, and that generator market power is a significant concern. SCE further notes that the information in Section IV tells a bidder of non-local area generation how much SCE paid in a prior solicitation and is a good indication of how much more a future bidder of non-local area generation could offer to charge SCE while still having its bid selected. SCE further states that SCE has issued four RFOs for non-renewable generation, and expects to issue more as the Commission continues to address resource adequacy and local area reliability. Moreover, SCE's valuation methodologies are generally similar from RFO to RFO because SCE must conform to the criteria in SCE's Commission-approved Procurement Plan. Therefore, SCE claims, the Confidential portions of Appendix B present a continuing concern even though the fall 2004 RFO described in Advice Letter 1832-E has been completed.

While we do not condone the lengthy delay in SCE's filing the supplemental comments and documents for in camera review, SCE has made a compelling argument that the procurement strategies and approaches outlined in the confidential portions of Appendix B are trade secret and highly market sensitive data. We are also persuaded that the trade secret and market sensitive aspects of the procurement strategies and approaches outlined in the confidential portions of Appendix B are likely to persist for a period of time longer than the two-years presented in the approved protective order. Section IV, Section VI, and the related diagram summarizing Section IV of Appendix B to SCE Advice Letter 1832-E, dated October 22, 2004 should remain confidential and should not be released.

IEP Data Requests PG&E 02-05 and SCE 02-06:

IEP requested that the utilities identify all purchases of electrical energy made from sources other than qualifying facilities during the period January 1, 2002 through the present date, including seller name, date of transaction, date and location of energy delivery, quantity and price of energy delivered. The May 9 Ruling determined that while access to hourly or monthly information of this type would provide market participants with the ability to discern the utilities net short positions, the utilities should make available aggregated information on resource purchases on a quarterly basis, broken down by resource type, volumes and cost. PG&E states that it provided purchases from irrigation districts, wholesale market purchases and sales on June 17, 2005, and also provided information on DWR sales and deliveries in response to IEP Data Request 02-07 on June 7, 2005.

Joint Outline

At the PHC, the ALJs discussed the joint outlines prepared and circulated electronically by CAC/EPUC on March 4, 2005 and PG&E on August 3, 2005.

The ALJs noted that the purpose of the joint outline is to assist the ALJs and the parties in searching for and referring to particular sections or portions of testimony, not to limit the testimony to the confines of the outline. All parties should begin with the joint outline presented on August, 2005, but may include additional sections at the end of the outline as needed, under the category of “Other.” Sections covering issues that are not addressed by individual parties may be intentionally left blank, and should be so designated. By e-mail on August 16, 2005, PG&E requested that the ALJs rule that the five year fixed price option identified as an issue in the CAC/EPUC outline be stricken from the joint outline on the basis that it would be an inefficient use of the parties resources and hearing time. As noted above, the purpose of the joint outline is to standardize the location of issues addressed within the testimony submitted, to the extent possible, not to limit the issues to be addressed. We decline to grant PG&E’s request.

Procedural Schedule

A revised procedural schedule was adopted at the PHC as follows:

August, 31, 2005	Concurrent Opening Testimony
September 21, 2005	Concurrent Rebuttal Testimony
October 26, 2005 to be continued day to day through November 10, 2005, as necessary	Evidentiary Hearing
Date to be set at Evidentiary Hearing	Concurrent initial briefs filed
Approximately December 21, 2005 (date to be set at Evidentiary Hearing)	Concurrent reply briefs filed

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Therefore, **IT IS RULED** that:

1. Pending discovery disputes are determined as set forth above.
2. The schedule for the joint evidentiary hearings in the QF Issues Phase of these proceedings is as set forth above.

Dated August 19, 2005, at San Francisco, California.

/s/ JULIE HALLIGAN by CAB
Julie Halligan
Administrative Law Judge

/s/ CAROL BROWN
Carol Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have this day served the attached original Administrative Law Judges' Ruling On Remaining Discovery Disputes on all parties of record in these proceedings or their attorneys of record by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses.

Dated August 19, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.